

Serial No. 10/696,802

Reply to Office Action of April 15, 2004

### REMARKS

Claims 1, 2, and 3 have been amended. It should be appreciated that the amended claims are consistent with the disclosure and do not add new matter. Claims 4-12 were allowed. Claims 1-12 remain in the application.

Claim 2 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Claim 2 has been amended accordingly. The Applicant respectfully submits that claims 1-3 are in a condition for allowance, which allowance is respectfully solicited.

Claims 1 and 3 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 4,614,074 to Evers. Applicant respectfully traverses this rejection.

U.S. Patent No. 4,614,074 to Evers discloses an apparatus for serially inserting a straw into a pouch. The apparatus is a Bartelt machine 30. The machine takes a web 31 of material, and applies a heat seal 32 to define each pouch. The pouch is opened at an opening station, and the product is placed in the pouch. An apparatus 40 inserts a straw into the pouch on a diagonal. An upper heat seal 38 is applied to the open mouth of the pouch. Evers '074 does not disclose a straw that is fixedly held at one end within the pouch in an integrally formed pocket.

In contradistinction, claim 1 discloses a flexible pouch with a self-contained straw. The flexible pouch includes a front panel and a back panel each having an upper edge, a lower edge opposite the upper edge, and side edges extending therebetween the upper and lower edges. The front panel and the back panel are initially joined together at the side edges and the lower edge to form the pouch. A straw is fixedly held inside the pouch by positioning the straw on an angle between an upper corner of the pouch and an opposite lower corner. A first seal is applied to the

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upper corner of the pouch to form a pocket for fixedly holding an upper end of the straw. A second seal extends along the upper edge of the pouch to close the pouch.

Evers '074 does not disclose, anticipate or otherwise suggest the claimed invention of claim 1 as amended. Evers '074 merely discloses a pouch with a free-floating straw inside the pouch, and the straw is inserted into the pouch on a diagonal. Evers '074 does not disclose a pouch with a fixed straw inside the pouch. Evers '074 does not disclose a pouch with an integrally formed pocket for holding one end of the straw. The structure of the Evers '074 pouch with a free-floating straw positioned on a diagonal is clearly distinguishable from Applicant's invention. The Applicant's invention does not include a straw that is free floating within the pouch after the pouch is sealed, but rather that the straw is fixed.

In fact, Evers '074 teaches away from the present invention since it teaches a straw that is free-floating in the pouch. The Applicant's invention solves the problem of locating the straw within the pouch associated with the Evers '074 free-floating straw. In light of the fact that the structure of the Evers '074 pouch is distinguishable from Applicant's invention, Applicant's invention is not anticipated by Evers '074.

Therefore, it is respectfully submitted that claim 1 as amended and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. §102(b).

Claims 1 and 3 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 5,782,344 to Edwards et al. Applicant respectfully traverses this rejection.

U.S. Patent Number 5,782,344 to Edwards et al. discloses a pouch 10 for a liquid product 11 having a straw 12 that is free-floating within an inner chamber of the pouch 10. The liquid product occupies about 60-90% of the volume of the inner chamber 13. The remaining volume of the inner chamber has the air evacuated therefrom in sufficient quantity so that the liquid is

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displaced within the inner chamber and the side walls are collapsed towards one another to facilitate grasping the straw. The user manipulates the straw to puncture the pouch. In this manner, the straw extends through the pouch so that it is accessible to the user. Edwards et al. '344 does not disclose a pouch with a straw fixedly held at one within a pocket formed in the pouch.

Edwards et al. '344 does not disclose, anticipate or otherwise suggest the claimed invention of claim 1 as amended. Edwards et al. '344 merely discloses a pouch with a free-floating straw inside the pouch, and the pouch is manipulated to locate the straw and push the straw through the pouch. Edwards et al. '344 does not disclose a pouch with a fixed straw inside the pouch. Edwards et al. '344 does not disclose a pouch with an integrally formed pocket for holding one end of the straw. The structure of the Edwards et al. '344 pouch with a free-floating straw is clearly distinguishable from Applicant's invention. The Applicant's invention does not rely on restricting the volume of the product in the pouch so that the walls are collapsed in order to locate the straw and pierce the pouch.

In fact, Edwards et al. '344 also teaches away from the present invention because it discloses that the straw is free floating in the pouch. Again, the Applicant's invention solves the problem of locating the straw within the pouch associated with the Edwards '344 free-floating straw. Since the structure of the Edwards et al. '344 pouch is distinguishable from Applicant's invention, Applicant's invention is not anticipated by Edwards et al. '344.

Therefore, it is respectfully submitted that claim 1 as amended and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. §102(b).

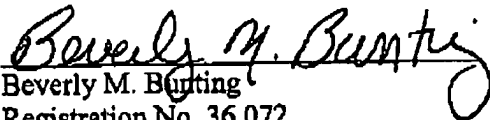
Based on the above, Applicant submits that the claims are in a condition for allowance, which allowance is respectfully solicited. If the Examiner finds to the contrary, it is respectfully

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requested that the undersigned in charge of this application be called at the telephone number given below to resolve any remaining issues.

Respectfully submitted,

  
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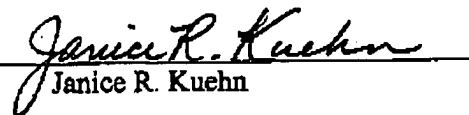
Attorney for Applicant

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**CERTIFICATE UNDER 37 CFR 1.8(a)**

I hereby certify that this correspondence is being sent to the United States Patent Office via facsimile (703-872-9306) on July 15, 2004.

  
Janice R. Kuehn